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**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

NORFOLK SOUTHERN RAILWAY
COMPANY
Three Commercial Place
Norfolk, Virginia 23510

Plaintiff,

v.

ENERGYSOLUTIONS, LLC
299 South Main Street
Suite #1700
Salt Lake City, Utah, 84111

Defendant.

Case No.

COMPLAINT

COMPLAINT

Plaintiff Norfolk Southern Railway Company (“Norfolk Southern”) hereby files this Complaint against defendant EnergySolutions, LLC (“Energy Solutions”) and avers as follows:

PARTIES

1. Norfolk Southern is a corporation organized under the laws of the Commonwealth of Virginia, with its principal place of business in Norfolk, Virginia. Norfolk Southern operates as an interstate rail carrier subject to the jurisdiction of the United States Surface Transportation

Board, and is governed by the provisions of the Interstate Commerce Act, 49 U.S.C. § 10101, *et seq.*

2. Defendant Energy Solutions is a limited liability company organized under the laws of the state of Utah with its principal place of business in Salt Lake City, Utah.

JURISDICTION

3. Jurisdiction in this matter is based upon 28 U.S.C. § 1337 as this is a cause of action arising under the Interstate Commerce Act, 49 U.S.C. §§ 10101, *et seq.* for the collection of special freight train service charges for the interstate transportation of radioactive material, constituting regulated freight under 49 C.F.R. 173.403 *et seq.*

VENUE

4. Venue properly lies in this judicial district pursuant to 28 U.S.C. § 1391 because Energy's principal place of business is in this judicial district.

PREDICATE FACTS

5. The subject matter of this action stems from special freight train service charges assessed pursuant to applicable tariff rates governing the common carriage of freight by Norfolk Southern, an interstate rail carrier, as mandated by 49 U.S.C. §11101.

6. The rules that set forth the manner in which Norfolk Southern's customers are assessed special freight train service charges are set forth in Norfolk Southern's "NS 8002-A" Tariff, which is available to the general public on the Internet.

7. Beginning in or about October of 2014, Norfolk Southern provided special freight train service and interstate rail transportation of radioactive freight at the request of Energy Solutions.

8. Norfolk Southern presented Energy Solutions with freight bills for said freight movements and demanded payment of the special freight train service charges in accordance with the rates set forth in the controlling tariffs and bills of lading.

9. The invoices Energy Solutions received totaled \$62,580. The total due to Norfolk Southern was never paid and the entirety remains due and owing to Norfolk Southern.

COUNT I

Failure to Pay Interstate Carrier Specialty Handling Freight Charges

10. Norfolk Southern incorporates the preceding paragraphs as if set forth fully at length herein.

11. Although demand has been made for payment of the outstanding special freight train service charges owed to Norfolk Southern, Energy Solutions has failed and/or refused to pay those charges which are due and owing.

WHEREFORE, Norfolk Southern Railway Company respectfully demands that judgment be entered in its favor and against defendant, EnergySolutions, LLC, in the amount of \$62,580.00 for outstanding special freight train service charges, together with costs, prejudgment interest, finance charges, attorneys' fees, and such other relief as the Court may allow.

Dated: December 22, 2015

Respectfully submitted,

STUCKI & RENCHER, LLC

By: /s/ Benjamin K. Lusty
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